

AMENDED IN SENATE SEPTEMBER 7, 2005

SENATE BILL

No. 843

Introduced by Senator Dunn

February 22, 2005

~~An act to amend Section 1305 of the Penal Code, relating to bail.~~
An act to amend Sections 65587 and 65589.3 of, and to add Section 65585.5 to, the Government Code, relating to general plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as amended, Dunn. ~~Bail.~~ *General plans: housing elements.*

Existing law requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element, and to submit a draft housing element or draft amendment to its housing element to the Department of Housing and Community Development for a determination of whether the draft complies with state law governing housing elements.

This bill would require a court, on a finding by the department that there is not substantial compliance with that law, to levy a fine and award attorney fees as specified. The bill would require the Controller to levy a fine of \$5,000 per month or \$0.25 per month per person in the jurisdiction, whichever is greater and subject to specified limits, upon a city, county, or city and county if specified conditions are met. The bill would provide that all fines shall accrue to the Housing Supply Account, which the bill would create in the Housing Rehabilitation Loan Fund, and that no money in that account shall be expended except upon appropriation by the Legislature.

~~Existing law prescribes the procedure for forfeiture of bail.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65585.5 is added to the Government
2 Code, to read:
3 65585.5. (a) On or after January 1, 2007, 45 days after the
4 department sends notice to a city, county, or city and county that
5 the jurisdiction is subject to fines pursuant to this section, the
6 department shall request and the Controller shall levy a fine on a
7 city, county, or city and county if the city, county, or city and
8 county, during the previous housing element cycle, did not adopt
9 a housing element that the department determined pursuant to
10 Section 65585 to be in substantial compliance with the
11 requirements of this article and, with respect to the third or
12 subsequent revision of its housing element, any of the following
13 conditions are met:
14 (1) The city, county, or city and county has failed to submit an
15 adopted housing element or amendment to the department within
16 six months of the deadline established by Section 65588.
17 (2) The department has determined that the adopted housing
18 element or amendment of the city, county, or city and county does
19 not substantially comply with the requirements of this article.
20 (b) If a city, county, or city and county subjects the
21 department's determination to judicial review, the collection of
22 fines shall be stayed pending the outcome of the action. If the
23 city, county, or city or county does not prevail in the action, the
24 city, county, or city and county shall be liable for the total
25 amount of fines that would have accrued had the action not been
26 filed.
27 (c) The fine levied by the Controller shall be five thousand
28 dollars (\$5,000) per month or twenty-five cents (\$0.25) per
29 month per person based on the most recent official estimate of
30 population for the jurisdiction as determined by the Department
31 of Finance, whichever is greater. For the purposes of this
32 section, the population of a county shall only include the
33 population residing in unincorporated areas. The fine shall be
34 levied each month until the city, county, or city and county
35 adopts a housing element or amendment that is determined by

1 *the department pursuant to Section 65585 to be in substantial*
2 *compliance with the requirements of this article.*

3 *(d) A court may reduce the fine based on mitigating factors if*
4 *the department certifies that its finding of noncompliance for the*
5 *community's adopted housing element or amendment is not*
6 *based in whole or in part either on the unavailability of adequate*
7 *sites or on a failure to analyze and address governmental*
8 *constraints. A court may also defer the onset of fines if the city,*
9 *county, or city and county can show that it was precluded from*
10 *submitting an adopted housing element or amendment to the*
11 *department due to a state of emergency in the community*
12 *declared by the Governor or due to bankruptcy.*

13 *(e) Any fines shall accrue to the Housing Supply Account,*
14 *which is hereby created in the Housing Rehabilitation Loan Fund*
15 *established by Section 50661 of the Health and Safety Code.*
16 *Notwithstanding Section 50661 of the Health and Safety Code,*
17 *no money in the Housing Supply Account shall be expended*
18 *except upon appropriation by the Legislature in the annual*
19 *Budget Act or other legislation. Funds in the account shall be*
20 *used for the purposes of providing assistance to multifamily*
21 *rental housing developments pursuant to the Multifamily*
22 *Housing Program established by Chapter 6.7 (commencing with*
23 *Section 50675) of Part 2 of Division 31 of the Health and Safety*
24 *Code in the respective region which includes the fined*
25 *jurisdiction.*

26 *(f) For purposes of this section, an adopted housing element*
27 *that has been self-certified pursuant to Section 65585.1 shall be*
28 *deemed to have been approved by the department, unless a court*
29 *finds that the jurisdiction's housing element does not*
30 *substantially comply with this article.*

31 *(g) If a city, county, or city and county fails to remit to the*
32 *Controller the full amount of any fine levied pursuant to this*
33 *section within 30 days, the Controller's office shall offset the*
34 *amount from the subsequent monthly allocation of funds due to*
35 *the city, county, or city and county pursuant to Section 11005 of*
36 *the Revenue and Taxation Code.*

37 *(h) The remedies prescribed by this section are in addition to*
38 *any other remedy provided under law.*

39 *SEC. 2. Section 65587 of the Government Code is amended to*
40 *read:*

1 65587. (a) Each city, county, or city and county shall bring
2 its housing element, as required by subdivision (c) of Section
3 65302, into conformity with the requirements of this article on or
4 before October 1, 1981, and the deadlines set by Section 65588.
5 Except as specifically provided in subdivision (b) of Section
6 65361, the Director of Planning and Research shall not grant an
7 extension of time from these requirements.

8 (b) Any action brought by any interested party to review the
9 conformity with ~~the provisions of~~ this article of any housing
10 element or portion thereof or revision thereto shall be brought
11 pursuant to Section 1085 of the Code of Civil ~~Procedure; the~~
12 *Procedure. The court's review of compliance with the provisions*
13 *of this article shall extend to whether the housing element or*
14 *portion thereof or revision thereto substantially complies with the*
15 *requirements of this article. If a court finds that any housing*
16 *element or portion thereof does not substantially comply with the*
17 *requirements of this article, the court, in addition to any other*
18 *remedy allowed by law, shall (1) levy a fine consistent with*
19 *Section 65585.5 and (2) award reasonable attorney's fees and*
20 *costs of suit to a plaintiff who is a person of lower income, is an*
21 *organization representing persons of lower income as described*
22 *in subdivision (b) of Section 65915, or who may be entitled to*
23 *fees and costs pursuant to Section 1021.5 of the Code of Civil*
24 *Procedure.*

25 (c) If a court finds that an action of a city, county, or city and
26 county, which is required to be consistent with its general plan,
27 does not comply with its housing element, the city, county, or
28 city and county shall bring its action into compliance within 60
29 days. However, the court shall retain jurisdiction throughout the
30 period for compliance to enforce its decision. Upon the court's
31 determination that the 60-day period for compliance would place
32 an undue hardship on the city, county, or city and county, the
33 court may extend the time period for compliance by an additional
34 60 days.

35 SEC. 3. *Section 65589.3 of the Government Code is amended*
36 *to read:*

37 65589.3. (a) In any action filed on or after January 1, 1991,
38 taken to challenge the validity of a housing element, there shall
39 be a rebuttable presumption of the validity of the element or
40 amendment if, pursuant to Section 65585, the department has

1 found that the element or amendment substantially complies with
2 the requirements of this article.

3 *(b) In any action filed on or after January 1, 2007, that is*
4 *taken to challenge the validity of a housing element or*
5 *amendment, if, pursuant to Section 65585, the department finds*
6 *that the element or amendment does not substantially comply*
7 *with the requirements of this article, the findings of the*
8 *department shall be entitled to deference and given great weight.*
9 *The Legislature finds and declares that this subdivision is*
10 *declaratory of existing law.*

11 ~~SECTION 1. Section 1305 of the Penal Code is amended to~~
12 ~~read:~~

13 ~~1305. (a) A court shall in open court declare forfeited the~~
14 ~~undertaking of bail or the money or property deposited as bail if,~~
15 ~~without sufficient excuse, a defendant fails to appear for any of~~
16 ~~the following:~~

17 ~~(1) Arraignment.~~

18 ~~(2) Trial.~~

19 ~~(3) Judgment.~~

20 ~~(4) Any other occasion prior to the pronouncement of~~
21 ~~judgment if the defendant's presence in court is lawfully~~
22 ~~required.~~

23 ~~(5) To surrender himself or herself in execution of the~~
24 ~~judgment after appeal.~~

25 ~~However, the court shall not have jurisdiction to declare a~~
26 ~~forfeiture and the bail shall be released of all obligations under~~
27 ~~the bond if the case is dismissed or if no complaint is filed within~~
28 ~~15 days from the date of arraignment.~~

29 ~~(b) If the amount of the bond or money or property deposited~~
30 ~~exceeds four hundred dollars (\$400), the clerk of the court shall,~~
31 ~~within 30 days of the forfeiture, mail notice of the forfeiture to~~
32 ~~the surety or the depositor of money posted instead of bail. At the~~
33 ~~same time, the court shall mail a copy of the forfeiture notice to~~
34 ~~the bail agent whose name appears on the bond. The clerk shall~~
35 ~~also execute a certificate of mailing of the forfeiture notice and~~
36 ~~shall place the certificate in the court's file. If the notice of~~
37 ~~forfeiture is required to be mailed pursuant to this section, the~~
38 ~~180-day period provided for in this section shall be extended by~~
39 ~~a period of five days to allow for the mailing.~~

1 ~~If the surety is an authorized corporate surety, and if the bond~~
2 ~~plainly displays the mailing address of the corporate surety and~~
3 ~~the bail agent, then notice of the forfeiture shall be mailed to both~~
4 ~~the surety at that address and to the bail agent, and mailing alone~~
5 ~~to the surety or the bail agent shall not constitute compliance~~
6 ~~with this section.~~

7 ~~The surety or depositor shall be released of all obligations~~
8 ~~under the bond if any of the following conditions apply:~~

9 ~~(1) The clerk fails to mail the notice of forfeiture in~~
10 ~~accordance with this section within 30 days after the entry of the~~
11 ~~forfeiture.~~

12 ~~(2) The clerk fails to mail the notice of forfeiture to the surety~~
13 ~~at the address printed on the bond.~~

14 ~~(3) The clerk fails to mail a copy of the notice of forfeiture to~~
15 ~~the bail agent at the address shown on the bond.~~

16 ~~(e) (1) If the defendant appears either voluntarily or in~~
17 ~~custody after surrender or arrest in court within 180 days of the~~
18 ~~date of forfeiture or within 180 days of the date of mailing of the~~
19 ~~notice if the notice is required under subdivision (b), the court~~
20 ~~shall, on its own motion at the time the defendant first appears in~~
21 ~~court on the case in which the forfeiture was entered, direct the~~
22 ~~order of forfeiture to be vacated and the bond exonerated. If the~~
23 ~~court fails to so act on its own motion, then the surety's or~~
24 ~~depositor's obligations under the bond shall be immediately~~
25 ~~vacated and the bond exonerated. An order vacating the~~
26 ~~forfeiture and exonerating the bond may be made on terms that~~
27 ~~are just and do not exceed the terms imposed in similar situations~~
28 ~~with respect to other forms of pretrial release.~~

29 ~~(2) If, within the county where the case is located, the~~
30 ~~defendant is surrendered to custody by the bail or is arrested in~~
31 ~~the underlying case within the 180-day period, and is~~
32 ~~subsequently released from custody prior to an appearance in~~
33 ~~court, the court shall, on its own motion, direct the order of~~
34 ~~forfeiture to be vacated and the bond exonerated. If the court fails~~
35 ~~to so act on its own motion, then the surety's or depositor's~~
36 ~~obligations under the bond shall be immediately vacated and the~~
37 ~~bond exonerated. An order vacating the forfeiture and~~
38 ~~exonerating the bond may be made on terms that are just and do~~
39 ~~not exceed the terms imposed in similar situations with respect to~~
40 ~~other forms of pretrial release.~~

1 ~~(3) If, outside the county where the case is located, the~~
2 ~~defendant is surrendered to custody by the bail or is arrested in~~
3 ~~the underlying case within the 180-day period, the court shall~~
4 ~~vacate the forfeiture and exonerate the bail.~~

5 ~~(4) In lieu of exonerating the bond, the court may order the~~
6 ~~bail reinstated and the defendant released on the same bond if~~
7 ~~both of the following conditions are met:~~

8 ~~(A) The bail is given prior notice of the reinstatement.~~

9 ~~(B) The bail has not surrendered the defendant.~~

10 ~~(d) In the case of a permanent disability, the court shall direct~~
11 ~~the order of forfeiture to be vacated and the bail or money or~~
12 ~~property deposited as bail exonerated if, within 180 days of the~~
13 ~~date of forfeiture or within 180 days of the date of mailing of the~~
14 ~~notice if notice is required under subdivision (b), it is made~~
15 ~~apparent to the satisfaction of the court that both of the following~~
16 ~~conditions are met:~~

17 ~~(1) The defendant is deceased or otherwise permanently~~
18 ~~unable to appear in the court due to illness, insanity, or detention~~
19 ~~by military or civil authorities.~~

20 ~~(2) The absence of the defendant is without the connivance of~~
21 ~~the bail.~~

22 ~~(e) In the case of a temporary disability, the court shall order~~
23 ~~the tolling of the 180-day period provided in this section during~~
24 ~~the period of temporary disability, provided that it appears to the~~
25 ~~satisfaction of the court that the following conditions are met:~~

26 ~~(1) The defendant is temporarily disabled by reason of illness,~~
27 ~~insanity, or detention by military or civil authorities.~~

28 ~~(2) Based upon the temporary disability, the defendant is~~
29 ~~unable to appear in court during the remainder of the 180-day~~
30 ~~period.~~

31 ~~(3) The absence of the defendant is without the connivance of~~
32 ~~the bail.~~

33 ~~The period of the tolling shall be extended for a reasonable~~
34 ~~period of time, at the discretion of the court, after the cessation of~~
35 ~~the disability to allow for the return of the defendant to the~~
36 ~~jurisdiction of the court.~~

37 ~~(f) In all cases where a defendant is in custody beyond the~~
38 ~~jurisdiction of the court that ordered the bail forfeited, and the~~
39 ~~prosecuting agency elects not to seek extradition after being~~
40 ~~informed of the location of the defendant, the court shall vacate~~

1 the forfeiture and exonerate the bond on terms that are just and
2 do not exceed the terms imposed in similar situations with
3 respect to other forms of pretrial release.

4 (g) In all cases of forfeiture where a defendant is not in
5 custody and is beyond the jurisdiction of the state, is temporarily
6 detained, by the bail agent, in the presence of a local law
7 enforcement officer of the jurisdiction in which the defendant is
8 located, and is positively identified by that law enforcement
9 officer as the wanted defendant in an affidavit signed under
10 penalty of perjury, and the prosecuting agency elects not to seek
11 extradition after being informed of the location of the defendant,
12 the court shall vacate the forfeiture and exonerate the bond on
13 terms that are just and do not exceed the terms imposed in similar
14 situations with respect to other forms of pretrial release.

15 (h) As used in this section, “arrest” includes a hold placed on
16 the defendant in the underlying case while he or she is in custody
17 on other charges.

18 (i) A motion filed in a timely manner within the 180-day
19 period may be heard within 30 days of the expiration of the
20 180-day period. The court may extend the 30-day period upon a
21 showing of good cause. The motion may be made by the surety
22 insurer, the bail agent, the surety, or the depositor of money or
23 property, any of whom may appear in person or through an
24 attorney. The court, in its discretion, may require that the moving
25 party provide 10 days prior notice to the applicable prosecuting
26 agency, as a condition precedent to granting the motion.